

# **COLORADO STATE BOARD OF MEDICAL EXAMINERS**

## **FULL BOARD OPEN MINUTES**

**February 19, 2009**

**9:08 a.m.**

A full board meeting of the Colorado State Board of Medical Examiners was held Thursday, February 19, 2009, at 1560 Broadway, Conference Room 1380, Denver, Colorado at 9:08 a.m. The meeting was noticed in accordance with Division policy.

Present were Dr. Allen-Davis, Dr. Butler, Dr. Faricy, Mr. Jennings, Reverend Leivers, Dr. Overholt, Ms. Radcliff, Mr. Schoenmakers and Dr. Watts.

The meeting was conducted by Dr. Faricy.

Also in attendance for all or part of the meeting were Board staff Cheryl Hara, Program Director; Susan Taylor, Enforcement Program Manager; Maria Soto, Program Assistant; Tracey Martinez, Physician Profile Administrator; CPHP staff Cae Allison, Connie Wood and Michael Gendel; and Ilene Wolf Moore, First Assistant Attorney General.

## **MINUTES**

A motion was made, seconded, and carried to approve the open and confidential minutes of the November 20, 2008 full board meeting as drafted and open and confidential minutes of the December 18, 2008 special meeting as drafted.

### **Introduction of New Board Member**

Dr. Faricy introduced the new Board member, Leticia M. Overholt, M.D.

## **REPORTS**

### **President's Report**

Dr. Faricy provided a review of the 3R program presentation presented for COPIC.

### **Section Director's Report**

None.

### **Program Director's Report**

None.

### **Outreach Report**

None

## **GENERAL BUSINESS**

### **Election of Officers, Colorado Medical Board**

A motion was made, seconded and unanimously carried to approve Jandel T. Allen-Davis, M.D., as the Board President, Mark C. Watts, M.D., as Vice President and Lisa R. Butler, D.O. as Secretary, effective May 2009.

### **Colorado Physician Health Program (CPHP)**

Michael Gendel, Medical Director, reported on CPHP's research concerning substance abuse programs that do not employ the 12-step philosophy or are otherwise not faith-based. Dr. Gendel explained two such alternative programs: the Optimum Circle Program and Rational Recovery. Dr. Gendel requested clarification from the Board regarding when such programs should be offered to individuals.

At 9:37 a.m., a motion was made, seconded and carried unanimously to enter into executive session pursuant to Sections 24-6-402(3)(a)(III), C.R.S., and 13-90-107(1)(b), C.R.S., which protect as confidential communications with counsel that are subject to the attorney-client privilege, to discuss the Board's rights and responsibilities relating to providing non faith-based options for licensees referred to CPHP. After discussion, at 9:42 a.m., the Board adjourned executive session and returned to open session.

After due consideration, a motion was made, seconded and carried to approve that CPHP provide an alternative to 12-step substance abuse programs if a licensee expresses an objection to complying with the traditional 12-step program and also advise the licensee of the evidence-based research to support the recommendation of a 12-step-based program.

#### **EMTS-MDC Recommendations for Rule 500 Waivers**

Arthur Kanowitz, M.D., Medical Director, Emergency Medical & Trauma Services (EMTS) Section, and Marilyn K. Bourn, R.N., EMTS State Training Coordinator at Colorado Department of Public Health and Environment (CDPHE), were present at the meeting to discuss Medical Direction Committee (MDC) Rule 500 Waiver recommendations and requests. The Board reviewed a January 27, 2009 memorandum from Dr. Arthur Kanowitz outlining the waiver requests and the Medical Advisory Group (MAG) recommendations, along with the waiver applications.

After discussion a motion was made, seconded and carried to adopt the EMTS-MDC recommendations for Rule 500 waiver requests with amendments. The rule of necessity was invoked after confirmation that all board members could remain fair and impartial for review of Waiver 09-07 submitted by Dr. Eugene Eby and Dr. John Roccio and Waiver 09-08 submitted by Dr. Michael Jobin.

The Board noted a letter from John Riccio, M.D., South Metro Fire Rescue, dated October 30, 2008, regarding yearly RSI data.

The Board noted a letter from Diane Hearne, M.D., and Fred Morrison dated January 30, 2009, fulfilling the reporting requirement for Eagle County Ambulance District.

#### **PUBLIC RULEMAKING TO AMEND RULE 500**

At 10:00 a.m. an announcement was made that rulemaking would start after conclusion of the General Business appearances.

A motion was made, seconded and carried to convene the public rulemaking hearing, which was convened at 10:32 a.m. and closed at 10:55 a.m. The Hearing was properly noticed under the provisions of the Administrative Procedure Act to consider Rule 500.

Dr. Faricy presented an overview of the proposed rule. A full opportunity was provided for submission of oral and written comments by the public.

#### **Rulemaking Hearing to Consider the Following Revision of Rules and Regulations:**

##### **Rule 500 – Colorado Board of Medical Examiners Rule Defining the Duties and Responsibilities of Emergency Medical Services Medical Directors and the Authorized Medical Acts of Emergency Medical Technicians.**

Discussion among the Board members ensued, including discussion of various proposed amendments including, but not limited to, recommendations to include Therapeutic Induced Hypothermia (TIH) in Rule 500 Proposed Revision.

After due consideration, a motion was made, seconded and carried to adopt Rule 500 with amendments, including the addition of TIH as an approved procedure, together with statement of basis and purpose, as published with the Notice of Rulemaking Hearing, to become effective April 30, 2009.

**Requests for Waivers of the Board for the Number of Advance Practice Nurses**

The Board reviewed a letter from Michael Towbin, M.D., Ultimate Health & Wellness, dated January 13, 2009, requesting a waiver of the number of nurse practitioners he is allowed to supervise on the basis that the total hours of supervision will remain under the weekly limit otherwise authorized.

A motion was made, seconded and carried to approve the waiver as requested.

**Rule 400 - Requests for Waivers of the Board rule Regarding the Regulation of Physician Assistants**

**Kenneth J. Kutalek, M.D., FAAP**

The Board reviewed correspondence from Dr. Kutalek and a request for waiver of Section 2 C (2) regarding on-site physician presence during the first 1000 working hours of a new PA graduate.

After careful consideration of the available information, a motion was made, seconded and carried to deny Dr. Kutalek's request.

**Floyd Russak, M.D.**

The Board reviewed correspondence and a waiver application from Dr. Russak.

After careful consideration of the available information, the Board found good cause existed under Board Rule 400, section 2(E). A motion was made, seconded, and carried to approve the waiver not to exceed two FTE physician assistants at any given time.

**CPHP Report, Second Quarter, Report ending December 31, 2008**

The Board reviewed the December 31, 2008 Second Quarter Report.

A motion was made, seconded and carried to accept the report.

**Revisions to the Medical Transparency Act Policies (40-21 and 40-22)**

The Board reviewed a memorandum dated February 3, 2009, from Cheryl Hara, Program Director, regarding revisions to the Medical Transparency Act Policies #40-21 and 40-22; confidential attorney-client memorandum dated December 30, 2008, from Ilene Wolff Moore, FAAG and Jason Largey, AAG, regarding the Michael Skolnik Medical transparency Act Threshold Comparisons.

After due consideration, a motion was made, seconded and carried to adopt the proposed amendments to Policies 40-21 and 40-22 and delegated to the Program Director the ability to make any necessary changes to the policy as a result of the HB 1188.

**American Medical Response – El Paso County**

Drs. Faricy and Overholt recused themselves from participation in this matter and departed the meeting room.

The Board reviewed the report prepared by Arthur Kanowitz, M.D., Medical Director, Emergency Medical & Trauma Services Section, regarding the review of American Medical Response – El Paso County related to the waiver to perform Rapid Sequence Intubation (RSI). After review the Board concluded no action was necessary.

**Sunset Review of Medical Practice Act**

The Board reviewed a memorandum dated February 3, 2009, from Cheryl Hara, Program Director.

The Board identified issues of importance to be discussed during the sunset process and further delegated to a sunset subcommittee the task of prioritizing such topics and coming up with recommendations to be reviewed by the full board. Members of the subcommittee include Dr. Allen-Davis, Dr. Watts, Dr. Calonge, and Ms. Radcliff.

**CPEP's Clinical Practice Re-entry Program**

The Board reviewed a letter from Elizabeth J. Korinek, MPH, Executive Director, Center for Personalized Education for Physicians (CPEP).

A motion was made, seconded and carried to authorize one Board member to administratively approve full licensure once the licensee successfully completes their required CPEP program.

**Annual Hospital Reporting Survey 2007**

The Board noted a memorandum dated November 3, 2008, from Tracey Martinez, Physician Profile Administrator.

**ATTORNEY GENERAL REPORTS**

**a. Case Status Reports**

The Board noted privileged case status reports dated January 30, 2009.

**REPORTS OF OFFICE OF INVESTIGATIONS**

**Paul S. Baxt, M.D., 2008-003823-F**

The Board reviewed a report from D'Ann Murphy, Investigator, dated November 24, 2008.

A motion was made, seconded and carried to refer this case to the Office of the Attorney General to initiate cease and desist proceedings.

**Brandon Credeur, D.C., 2008-003969-F (Medical) and 2008-003023 (Chiro)**

The Board reviewed combined reports from Martha Mesch, Investigator, dated December 23, 2008.

A motion was made, seconded and carried to table this case pending the outcome from the Chiropractic Board.

**Jan Hamilton, 2008-003300-F**

The Board reviewed a report from Martha Mesch, Investigator, dated December 4, 2008.

A motion was made, seconded and carried to table this case to request the FAG contact the office of the district attorney and report to the Board potential options.

**Melinda Hulse, 2008-003956-F**

The Board reviewed a report from Martha Mesch, Investigator, dated December 19, 2008.

A motion was made, seconded and carried to refer this case to the Office of the Attorney General to initiate cease and desist proceedings.

**Allison Kellagher, 2008-003963-F**

The Board reviewed a report from Martha Mesch, Investigator, dated December 23, 2008.

A motion was made, seconded and carried to refer this case to the Office of the Attorney General to initiate cease and desist proceedings. The Board also voted to refer the matter to the Grievance Board.

**Teleradiology Solutions, Inc., 2009-000001-F**

The Board reviewed a report from William Schlitter, Investigator, dated December 24, 2008.

A motion was made, seconded and carried to refer Meenakshi Pandit, M.D., and Arjun Kalyanpur, M.D. to an Inquiry Panel of the Board.

**Ann-Marie Yeager, 2008-002819-F and 2009-001064-F**

The Board reviewed a memorandum from Cheryl Hara, Program Director, dated February 6, 2009.

A motion was made, seconded and carried to dismiss the case.

**ALLEGATIONS OF UNLICENSED PRACTICE OF MEDICINE AND/OR RULE 800 VIOLATIONS**

**Dilorom Asimova (Unlicensed Practice)**

The Board reviewed an attorney-client privileged communication and memorandum from Sue Kim, AAG, dated January 30, 2009.

A motion was made, seconded and carried to refer this case to the Office of Investigations.

**Allison Clark dba Cabana Medical and Day Spa (Rule 800 Violation)**

The Board reviewed a memorandum from Diane Blea, Barber and Cosmetology Inspector, dated December 26, 2008, and a memorandum from Diane Blea and Dennis Romero dated January 30, 2009.

A motion was made, seconded and carried to refer this matter to the Office of the Attorney General to initiate injunctive proceedings.

**Steve Colton (Unlicensed Practice)**

The Board reviewed an e-mail message from Rose McCool dated January 23, 2009.

A motion was made, seconded and carried to direct staff to send a warning letter and request information confirming that the website has been updated.

**Vera Karpova (Unlicensed Practice)**

The Board reviewed a letter from Joseph H. Lusk, Attorney-at-Law, dated November 25, 2008.

A motion was made, seconded and carried to send a letter to Attorney Lusk requesting details regarding the complainant's claims, such as medical records and specific information regarding care.

**ITEMS OF INTEREST**

- The Board reviewed information regarding Rocky Vista University and St. George University School of Medicine.
- The Board reviewed an article originally printed in the Medical Board of California Action Report newsletter, "Preventive Medicine and the Seven Deadly Sins: Avoiding Discipline Against Your Medical License," by Laura Sweet, Supervising Investigator II.
- The Board reviewed an excerpt from the website of the U.S. Department of Health & Human Services' Centers for Medicare and Medicaid Services reprinted in the Medical Board of California Newsletter dated July 2007, "Guidance on Compliance with the HIPAA National Provider Identifier (NPI) Rule: After the May 23, 2007 Implementation Deadline."

- The Board reviewed an article from *Copiscope* (Newsletter of COPIC Insurance Co.), November 2008 issue, regarding updated guidelines for the release and retention of medical records.

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 1:58 p.m.

These Minutes were approved by the Panel on this 21st day of May, 2009.

**FOR THE BOARD OF MEDICAL EXAMINERS**

*Approved by: Jandel Allen-Davis, M.D.*

*Date: May 21, 2009*